

1 PSYCH-APPEAL, INC.  
Meiram Bendat (Cal. Bar No. 198884)  
2 8560 West Sunset Boulevard, Suite 500  
West Hollywood, CA 90069  
3 Tel: (310) 598-3690, x 101  
Fax: (888) 975-1957  
4 mbendat@psych-appeal.com

5 ZUCKERMAN SPAEDER LLP  
Aitan Goelman (admitted *pro hac vice*)  
6 Christopher R. MacColl (admitted *pro hac vice*)  
1800 M St., NW, Suite 1000  
7 Washington, DC 20036  
Tel: (202) 778-1800  
8 Fax: (202) 822-8106  
agoelman@zuckerman.com  
9 cmaccoll@zuckerman.com

10 *Attorneys for Plaintiff*

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

14 ROGER BROWN, on behalf of his  
beneficiary daughter,

15 Plaintiff,

16 v.

17 UNITED BEHAVIORAL HEALTH and  
18 UNITEDHEALTHCARE INSURANCE  
COMPANY,

19 Defendants.

Case No. Case No. 4:20-cv-04129-HSG

**STIPULATED PROTECTIVE ORDER**

Complaint filed: June 22, 2020

## 1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential and private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, including information concerning the health of J.B., an 18-year-old woman who is proceeding under a pseudonym. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information that is entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

## 2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 "CONFIDENTIAL ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "CONFIDENTIAL Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.4 Confidential Personal Information means any document or information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, or the past, present, or future payment for the

1 provision of health care to such individual or subscriber. Confidential Personal Information  
2 includes, but is not limited to:

3 (a) “Protected health information,” (“PHI”), as that term is defined by the Standards  
4 for Privacy of Individually Identifiable Health Information, 45 C.F.R. parts 160 and 164,  
5 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996  
6 (“HIPAA”). *See* 45 C.F.R. §§ 164.501 (“protected health information”) and 160.103  
7 (“individually identifiable health information”).

8 (b) Medical bills, claims forms, charge sheets, medical records, medical charts, test  
9 results, notes, dictation, invoices, itemized billing statements, remittance advice forms,  
10 explanations of benefits, checks, notices, requests, notes, summaries, compilations, extracts,  
11 abstracts, or oral communications that contain PHI

12 (c) Information that qualifies as “Personal Information” or “Personally Identifiable  
13 Information” as defined in state privacy laws including but not limited to an individual’s name in  
14 combination with a social security number, account number or other financial information, state  
15 ID number, or other information that could be used to identify a particular individual.

16 2.5 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
17 well as their support staff).

18 2.6 Designating Party: a Party or Non-Party that designates information or items that  
19 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
20 “CONFIDENTIAL ATTORNEYS’ EYES ONLY.”

21 2.7 Disclosure or Discovery Material: all items or information, regardless of the  
22 medium or manner in which it is generated, stored, or maintained (including, among other things,  
23 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
24 responses to discovery in this matter.

25 2.8 Expert: a person with specialized knowledge or experience in a matter pertinent to  
26 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
27 consultant in this action.

28 2.9 House Counsel: attorneys who are employees of a party to this action. House

1 Counsel does not include Outside Counsel of Record or any other outside counsel.

2 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal  
3 entity not named as a Party to this action.

4 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this  
5 action but are retained to represent or advise a party to this action and have appeared in this action  
6 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

7 2.12 Party: any party to this action, including all of its officers, directors, employees,  
8 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

9 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
10 Material in this action.

11 2.14 Professional Vendors: persons or entities that provide litigation support services  
12 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
13 organizing, storing, or retrieving data in any form or medium) and their employees and  
14 subcontractors.

15 2.15 Protected Material: any Disclosure or Discovery Material that is designated as  
16 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY.”

17 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
18 Producing Party.

### 19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected Material  
21 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
22 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
23 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
24 However, the protections conferred by this Stipulation and Order do not cover the following  
25 information: (a) any information that is in the public domain at the time of disclosure to a  
26 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
27 a result of publication not involving a violation of this Order, including becoming part of the  
28

1 public record through trial or otherwise; and (b) any information known to the Receiving Party  
 2 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
 3 obtained the information lawfully and under no obligation of confidentiality to the Designating  
 4 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

5 This Stipulation and Order shall govern any record of information produced in this action  
 6 and designated pursuant to this Stipulation and Order, including all designated deposition  
 7 testimony, all designated testimony taken at a hearing or other proceeding, all designated  
 8 deposition exhibits, interrogatory answers, admissions, documents and other discovery materials,  
 9 whether produced informally or in response to interrogatories, requests for admissions, requests  
 10 for production of documents or other formal methods of discovery.

11 This Stipulation and Order shall also govern any designated record of information  
 12 produced in this action pursuant to required disclosures under any federal procedural rule or local  
 13 rule of the Court and any supplementary disclosures thereto.

14 This Stipulation and Order shall apply to the parties and to any nonparty from whom  
 15 discovery may be sought who desires the protection of this Protective Order.

16 Nonparties may challenge the confidentiality of the protected information by filing a  
 17 motion to intervene and a motion to de-designate.

#### 18 **4. DURATION**

19 Even after final disposition of this litigation, the confidentiality obligations imposed by  
 20 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
 21 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
 22 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
 23 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 24 including the time limits for filing any motions or applications for extension of time pursuant to  
 25 applicable law.

#### 26 **5. DESIGNATING PROTECTED MATERIAL**

27  
 28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party

1 or Non-Party that designates information or items for protection under this Order must take care  
 2 to limit any such designation to specific material that qualifies under the appropriate standards.  
 3 To the extent it is practical to do so, the Designating Party must designate for protection only  
 4 those parts of material, documents, items, or oral or written communications that qualify – so that  
 5 other portions of the material, documents, items, or communications for which protection is not  
 6 warranted are not swept unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 8 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 9 unnecessarily encumber or retard the case development process or to impose unnecessary  
 10 expenses and burdens on other parties) expose the Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it designated  
 12 for protection do not qualify for protection at all or do not qualify for the level of protection  
 13 initially asserted, that Designating Party must promptly notify all other parties that it is  
 14 withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
 16 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,  
 17 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
 18 designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents, but  
 21 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
 22 Party affix the legend "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY"  
 23 to each page that contains protected material. If only a portion or portions of the material on a  
 24 page qualifies for protection, the Producing Party also must clearly identify the protected  
 25 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
 26 portion, the level of protection being asserted.

27 Notwithstanding any other provision of this Stipulated Protective Order, nonpublic  
 28 documents containing Confidential Personal Information shall be treated as if designated as

1 “CONFIDENTIAL” in accordance with this Stipulated Protective Order without regard to any  
2 formal designation by the producing party.

3 A Party or Non-Party that makes original documents or materials available for inspection  
4 need not designate them for protection until after the inspecting Party has indicated which  
5 material it would like copied and produced. After the inspecting Party has identified the  
6 documents it wants copied and produced, the Producing Party must determine which documents,  
7 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
8 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
9 “CONFIDENTIAL ATTORNEYS’ EYES ONLY”) to each page that contains Protected  
10 Material. If only a portion or portions of the material on a page qualifies for protection, the  
11 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
12 markings in the margins) and must specify, for each portion, the level of protection being  
13 asserted.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
15 Designating Party identify on the record, before the close of the deposition, hearing, or other  
16 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
17 impractical to identify separately each portion of testimony that is entitled to protection and it  
18 appears that substantial portions of the testimony may qualify for protection, the Designating  
19 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)  
20 a right to have up to 21 days to identify the specific portions of the testimony as to which  
21 protection is sought and to specify the level of protection being asserted. Only those portions of  
22 the testimony that are appropriately designated for protection within the 21 days shall be covered  
23 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may  
24 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the  
25 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
26 ATTORNEYS’ EYES ONLY.”

27 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
28 other proceeding to include Protected Material so that the other parties can ensure that only

1 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
 2 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
 3 shall not in any way affect its designation as “CONFIDENTIAL” or “CONFIDENTIAL  
 4 ATTORNEYS’ EYES ONLY.”

5 Transcripts containing Protected Material shall have an obvious legend on the title page  
 6 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
 7 pages (including line numbers as appropriate) that have been designated as Protected Material and  
 8 the level of protection being asserted by the Designating Party. The Designating Party shall  
 9 inform the court reporter of these requirements. Any transcript that is prepared before the  
 10 expiration of a 21-day period for designation shall be treated during that period as if it had been  
 11 designated “CONFIDENTIAL ATTORNEYS’ EYES ONLY” in its entirety unless otherwise  
 12 agreed. After the expiration of that period, the transcript shall be treated only as actually  
 13 designated.

14 (c) for information produced in some form other than documentary and for any other  
 15 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
 16 or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
 17 “CONFIDENTIAL ATTORNEYS’ EYES ONLY.” If only a portion or portions of the  
 18 information or item warrant protection, the Producing Party, to the extent practicable, shall  
 19 identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 21 designate qualified information or items does not, standing alone, waive the Designating Party’s  
 22 right to secure protection under this Order for such material. Upon timely correction of a  
 23 designation, the Receiving Party must make reasonable efforts to assure that the material is  
 24 treated in accordance with the provisions of this Order.

## 25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
 28



1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
2 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
3 challenge a confidentiality designation by electing not to challenge the designation promptly after  
4 the original designation is disclosed.

5         6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
6 process by providing written notice of each designation it is challenging and describing the basis  
7 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
8 notice must recite that the challenge to confidentiality is being made in accordance with this  
9 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
10 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
11 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
12 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
13 designation was not proper and must give the Designating Party an opportunity to review the  
14 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
15 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
16 stage of the challenge process only if it has engaged in this meet and confer process first or  
17 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
18 a timely manner.

19         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
20 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
21 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
22 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
23 process will not resolve their dispute, whichever is earlier. Each such motion must be  
24 accompanied by a competent declaration affirming that the movant has complied with the meet  
25 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
26 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
27 shall automatically waive the confidentiality designation for each challenged designation. In  
28 addition, the Challenging Party may file a motion challenging a confidentiality designation at any

time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

**7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation, or in another manner after obtaining the consent of the individual's whose Confidential Personal Information is included. Absent consent of the person whose Confidential Personal Information is included, Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 14 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

**7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information

1 for this litigation;

2 (b) the Receiving Party and the officers, directors, and employees (including House  
3 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and  
4 who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

5 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
6 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
7 Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
10 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
13 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
14 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
15 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
16 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
17 Stipulated Protective Order;

18 (g) the author or recipient of a document containing the information or a custodian or  
19 other person who otherwise possessed or knew the information; and

20 (h) any other person upon the consent of all persons whose Confidential Personal  
21 Information the Protected Material contains.

22 7.3 Disclosure of “CONFIDENTIAL ATTORNEYS’ EYES ONLY” Information or  
23 Items: Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
24 Receiving Party may disclose any information or item designated “CONFIDENTIAL  
25 ATTORNEYS’ EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
27 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
28 for this litigation;

(b) House Counsel of the Receiving Party to whom disclosure is reasonably necessary for this litigation;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any other person upon the consent of all persons whose Confidential Information the Protected Material contains.

#### **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY” before a

determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the

burden and expense of seeking protection in this court of its Protected Material.

**10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

**12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered

1 by this Protective Order.

2 12.3 Filing Protected Material. Without written permission from the Designating Party  
 3 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
 4 the public record in this action any Protected Material. A Party that seeks to file under seal any  
 5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
 6 filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material  
 7 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
 8 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
 9 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
 10 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the  
 11 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule  
 12 79-5(e)(2) unless otherwise instructed by the court.

#### 13 14. FINAL DISPOSITION

14 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
 15 Receiving Party must return all Protected Material to the Producing Party or destroy such  
 16 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
 17 compilations, summaries, and any other format reproducing or capturing any of the Protected  
 18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
 19 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
 20 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
 21 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
 22 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
 23 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
 24 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
 25 legal memoranda, correspondence, deposition and trial exhibits, written discovery requests and  
 26 responses, expert reports, attorney work product, and consultant and expert work product, even if  
 27 such materials contain Protected Material. Any such archival copies that contain or constitute  
 28



1 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

2  
3 IT IS SO STIPULATED.

4  
5 Dated: November 3, 2020

CROWELL & MORING LLP

*Attorneys for Defendants*

7 By: /s/ Dylan S. Burstein

8 Dated: November 3, 2020

PSYCH-APPEAL, INC. and  
ZUCKERMAN SPAEDER LLP

10 By: /s/ Christopher R. MacColl

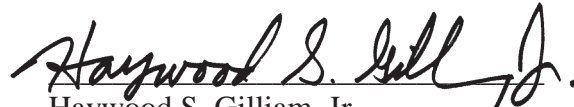
11  
12 *Pursuant to Local Rule 5-1(i)(3), I hereby attest that all other signatories listed concur in the*  
13 *content of this document and have authorized its filing.*

14 /s/ Christopher R. MacColl

15 Christopher R. MacColl

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 DATED: 11/6/2020

18 

Haywood S. Gilliam, Jr.

United States District Judge



EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California in the case of *Brown v. United Behavioral Health, et al.*, Case No. 4:20-cv-04129. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_